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**IN THE  
COURT OF APPEALS OF INDIANA**

IN THE MATTER OF T.B.,

Appellant-Respondent,

VS.

STATE OF INDIANA,

Appellee-Petitioner.

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No. 49A02-0608-JV-653

APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Marilyn A. Moores, Judge

The Honorable Scott Stowers, Magistrate

Cause Nos. 49D09-0510-JD-4687, 49D09-0509-JD-3985, 49D09-0509-JD-3986

**April 17, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

T.B. appeals the trial court's finding she violated her probation by running away. Because the evidence is sufficient to support that finding, we affirm.

### **FACTS AND PROCEDURAL HISTORY**

T.B. was declared a delinquent child under three separate cause numbers for committing acts that if committed by an adult would be: (1) battery; (2) resisting law enforcement and disorderly conduct; and (3) theft and criminal mischief. The court placed T.B. on probation with special conditions. Those conditions required that she "obey all rules and regulations of your legal guardian [T.B.'s grandmother, Marjorie Avant] and keep them [sic] informed of your whereabouts at all times" and that she "agree to follow the curfew as established by your guardian, the Court and the laws for the County and State." (App. at 122.)

On May 21, 2006, Avant permitted T.B. to leave the house until 8:00 or 8:30 in the evening. T.B. did not return until 8:30 or 9:00 p.m. the next day. Police arrested T.B. for violating probation.

The State filed an information alleging T.B. was a delinquent child who had violated her probation when she "committed the act of runaway on 5/21/2006." (*Id.* at 333, 126, 214.) After hearing Avant's testimony, the court found "even though permission was given, [T.B.] exceeded the scope of her permission. Therefore, I do find that the State's met its burden by preponderance and adjudicate the child . . . to be a delinquent child, violating probation." (Tr. at 11-12.)

## DISCUSSION AND DECISION

T.B. challenges the sufficiency of the evidence she violated her probation. When conducting such a review, we will not reweigh the evidence or reassess the credibility of the witnesses. *K.S. v. State*, 849 N.E.2d 538, 543 (Ind. 2006). Rather, we view the evidence in the light most favorable to the judgment, considering only the evidence that supports the judgment and the reasonable inferences therefrom. *Id.* To demonstrate a probation violation, the State need prove a violation by only a preponderance of the evidence. *C.S. v. State*, 817 N.E.2d 1279, 1281 (Ind. Ct. App. 2004).

The State alleged T.B. ran away. The parties agree this act is defined by Ind. Code § 31-37-2-2, which provides:

A child commits a delinquent act if, before becoming eighteen (18) years of age, the child leaves home:

- (1) without reasonable cause; and
- (2) without permission of the parent, guardian, or custodian, who requests the child's return.

T.B. first argues she did not violate the statute because she left home with permission and because Avant did not testify that she “made a request that [T.B.] return home.” (Appellant’s Br. at 5.) We disagree.

Avant testified she gave T.B. permission to leave the house on May 21 until 8:00 or 8:30 in the evening. When T.B. did not return by 8:30, she was out of the house without permission. In addition, when Avant gave T.B. permission to leave the house, Avant requested T.B. return at a particular time. The statute does not declare the request

for return must come *after* the child has left the home without permission;<sup>1</sup> it simply states there must have been a request that the child return. Avant's grant of permission for a limited time satisfied this requirement. Therefore, the evidence supports finding T.B. committed the delinquent act of running away.

Next, T.B. asserts violation of the "runaway" statute is insufficient to constitute a probation violation. T.B. argues the court also needed to find she "needs care, treatment, or rehabilitation that: (A) the child is not receiving; (B) the child is unlikely to accept voluntarily; and (C) is unlikely to be provided or accepted without the coercive intervention of the court." Ind. Code § 31-37-2-1. Again, we disagree.

Ind. Code § 31-37-2-1 defines a delinquent child as one, under the age of eighteen, who commits one of the "delinquent acts" described in Ind. Code ch. 31-37-2 and who needs care, treatment or rehabilitation for the three reasons quoted above. However, the court was not obliged to find once again that T.B. was a delinquent child under Ind. Code § 31-37-2-1 before revoking her probation. Rather, the court needed only find she violated the conditions of her probation. *See C.S.*, 817 N.E.2d at 1281 ("It is axiomatic that to violate one's probation, one must perform some prohibited act, or fail to perform some required action, during the period of probation.").

When T.B. was released to probation, she agreed to "obey all rules and regulations of [her] legal guardian [T.B.'s grandmother, Marjorie Avant]," to "keep [Avant] informed of [her] whereabouts at all times," and "to follow the curfew as established by

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<sup>1</sup> As the State notes, requiring the request to be made after a child leaves home without permission would make it impossible to demonstrate a child had run away in every case in which the parent or guardian was unable to contact the child after the child left home. This could not have been the legislature's intent.

[Avant], the Court and the laws for the County and State.” (App. at 122.) When T.B. committed the delinquent act defined in Ind. Code § 31-37-2-2, she had failed to obey Avant’s rule and to follow the curfew Avant established. Therefore, that act was sufficient to justify revocation of probation.

Affirmed.

NAJAM, J., and MATHIAS, J., concur.